

Information **UPDATE**

Wisconsin Department of Public Instruction/John T. Benson, State Superintendent/125 S. Webster St./P.O. Box 7841/ Madison, WI 53707-7841

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TO: District Administrators, CESA Administrators, CCDEB Administrators,
Directors of Special Education and Pupil Services, and Other Interested Parties

FROM: Juanita S. Pawlisch, Ph.D., Assistant Superintendent
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SUBJECT: Changes in State Law Relating to Transfer Pupils, Surrogate Parents, Definition of "Parent," Physician Referral for Occupational Therapy, and Licensure of Occupational Therapists and Occupational Therapy Assistants

On June 1, 2000, provisions of Chapter PI 11, Wis. Admin. Code, relating to transfer pupils, surrogate parents and physician referral for school occupational therapy were revised. On May 23, 2000, 1999 Wisconsin Act 116 modified the definition of "parent" of a child with a disability for special education purposes. Also changes have been made recently to Chapters 15 and 448, Wis. Stats, that affect occupational therapy. The changes in the code and statutes are summarized below. The *Model Local Educational Agency Special Education Policies and Procedure* produced by the Department of Public Instruction has been revised to include these changes. The revised document can be found at www.dpi.state.wi.us/dpi/dlsea/een/monitor.html. The Wisconsin Administrative Code and the Wisconsin Statutes are available at www.legis.state.wi.us/.

Transfer Pupils

§ PI 11.07 Transfer Pupils, Wis. Admin. Code, has been repealed and recreated. The recreated rule includes new provisions relating to transfer pupils with disabilities within Wisconsin and from outside Wisconsin. A copy of the new rule is attached.

The requirements relating to transfer pupils with disabilities within Wisconsin remain the same. Language has been added to clarify that when a local educational agency (LEA) receives a transfer pupil with a disability from another Wisconsin LEA, the receiving LEA must implement the individualized education program (IEP) from the sending LEA so there is no interruption in services. The new rule clarifies that to the extent the receiving LEA is not able to implement the sending LEA's IEP, the receiving LEA must provide services that approximate, as closely as possible, the services in the sending LEA's IEP. The sending LEA's IEP must be implemented until the receiving LEA adopts the sending LEA's IEP or develops its own IEP.

The requirements relating to transfer pupils from outside Wisconsin have been changed. The former rule required the LEA to treat an out-of-state transfer pupil with a disability as a pupil referred for an initial special education evaluation. The new rule permits a LEA to treat an out-of-state transfer pupil with a disability in the same manner as a transfer pupil from another Wisconsin LEA. The rule permits the LEA to adopt the sending out-of-state public agency's evaluation, eligibility determination and IEP.

Surrogate Parents

§ PI 11.14 Surrogate Parents, Wis. Admin. Code, has been repealed. The rule was repealed to eliminate state requirements that were not included in federal law. The controlling authority in this area is now § 34 CFR 300.515 of the regulations implementing the Individuals with Disabilities Education Act (IDEA). A copy of the regulation is attached. The IDEA regulations can be found at www.ed.gov/legislation/FedRegister/finrule/index.html.

Definition of "Parent"

The definition of "parent" at § 115.76(12), Wis. Stats., has been modified to include a foster parent under certain circumstances. Attached is a copy of 1999 Wisconsin Act 116, which modified the definition. A local educational agency can determine that a foster parent may act as a parent if the local educational agency determines that-

- the right and the responsibility of the parent (all of the persons specified at § 115.76(12)(a)1. to 5.) to make educational decisions concerning the child has been extinguished by termination of parental rights, by transfer of guardianship or legal custody or by other court order;
- the foster parent has an ongoing, long-term parental relationship with the child;
- the foster parent is willing to make educational decisions required of parents under special education law; and
- the foster parent has no interests that would conflict with the interests of the child.

Physician Referral for School Occupational Therapy

A medical referral from a licensed physician no longer is required for school occupational therapy. § PI 11.24 (9)(c), Wis. Admin. Code, has been revised to read, "The school occupational therapist shall have medical information regarding a child before the child receives occupational therapy." As before, the amount of medical information the occupational therapist needs to ensure the child's safety during interventions depends on the individual child's medical history. It may be obtained from a parent, patient health care provider or other reliable source.

The change in rule is consistent with the Medical Examining Board's 1999 interpretation of § Med 19.08 (2), Wis. Admin. Code. The interpretation concludes that the intent of § Med 19.08(2) is to require a physician referral when occupational therapy rehabilitation treatment is to be performed. Because school occupational therapy is provided to assist a child to benefit from special education, not to perform rehabilitative treatment, a referral from a physician is not required for school occupational therapy.

State Licensure for Occupational Therapists and Occupational Therapy Assistants

Since 1988, all occupational therapists (OTs) and occupational therapy assistants (OTAs) who practice in Wisconsin have been required to hold a certificate from the Medical Examining Board of the Wisconsin Department of Regulation and Licensing (DRL). Proof of this certification is required for the Department of Public Instruction (DPI) to grant a school occupational therapy license or school occupational therapy assistant license to a qualified applicant.

Effective June 2, 2000, Wisconsin Act 180 transfers the state regulatory authority over OTs and OTAs to the Occupational Therapists Affiliated Credentialing Board. The Act provides for a seven-month transition period for appointing board members and implementing the provisions of the Act. At the end of that period, all OTs and OTAs who are currently certified by DRL will be considered to be licensed. After the transition period, all new applicants will be licensed rather than certified. Standards for the occupational therapy license or the occupational therapy assistant license issued by DPI (Chapter PI 34, Wis. Admin. Code) are unchanged. The change from certification to licensure does not require any action on the part of school OTs or school OTAs at this time.

The change from certification to licensure permits OTs to define a scope of practice. In Act 180, “occupational therapy” is defined as:

the therapeutic use of purposeful and meaningful occupations to evaluate and treat individuals of all ages who have a disease, disorder, impairment, activity limitation or participation restriction that interferes with their ability to function independently in daily life roles and environments, and to promote health and wellness.

In answer to an often-asked question, the Act takes the opportunity to define the word “occupation” in this context as:

Intentional, action-oriented behavior that is personally meaningful to an individual, and that is determined by the individual’s characteristics, culture and environment.

Over the next several months, DRL will promulgate rules relating to the certification and practice of occupational therapy to replace Chapter Med 19, Wis. Admin. Code. Until new rules are published, Chapter Med 19 will continue in effect.

Questions regarding this information update can be addressed to Stephanie Petska at (608) 266-1781.

This information update can also be accessed through the Internet:

<http://www.dpi.state.wi.us/dpi/dlsea/een/bulindex.html>

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PI 11.07 Transfer pupils. (1) **DEFINITIONS.** In this section "transfer pupil with a disability" means a child with a disability under the IDEA whose residence has changed from an LEA in this state to another LEA in this state or from a public agency in another state to an LEA in this state.

(2) TRANSFER PUPILS WITH DISABILITIES IN WISCONSIN.

(a) The purpose of this subsection is to ensure that there is no interruption of special education and related services when a child with a disability transfers from one LEA in this state to another LEA in this state.

(b) When an LEA receives a transfer pupil with a disability, the receiving LEA shall implement the IEP from the sending LEA until the receiving LEA adopts the sending LEA's IEP or develops its own IEP. To the extent that the receiving LEA is not able to implement the sending LEA's IEP, the receiving LEA shall provide services that approximate, as closely as possible, the sending LEA's IEP.

(c) The receiving LEA shall adopt the evaluation and the eligibility determination of the sending LEA or conduct an evaluation and eligibility determination of the transfer pupil. The receiving LEA shall adopt the IEP of the sending LEA or develop a new IEP. The receiving LEA may not adopt the evaluation and eligibility determination or the IEP of the sending LEA if the evaluation and eligibility determination or the IEP do not meet state and federal requirements.

(d) When an LEA receives a transfer pupil with a disability and the LEA does not receive the pupil's records from the sending LEA, the LEA shall request in writing the pupil's records from the sending LEA. The sending LEA shall transfer the pupil's records to the receiving LEA within 5 working days of receipt of the written notice as required under s. 118.125(4), Stats.

(3) TRANSFER PUPILS WITH DISABILITIES FROM OUTSIDE WISCONSIN.

(a) The purpose of this subsection is to permit an LEA to adopt the most recent evaluation and eligibility determination and IEP of a transfer pupil with a disability from a public agency in another state.

(b) When an LEA receives a transfer pupil with a disability from a public agency in another state, the LEA may provide special education and related services in accordance with the most recent IEP developed by the sending public agency until the LEA develops its own IEP or adopts the sending public agency's IEP.

(c) The LEA shall adopt the evaluation and the eligibility determination of the sending public agency or conduct a new evaluation and eligibility determination of the transfer pupil. If the LEA decides not to adopt the evaluation and eligibility determination of the sending public agency, the LEA shall initiate a special education referral of the child. The LEA shall complete the evaluation and develop an IEP and the placement in accordance with the requirements of subch. V of ch. 115, Stats., within 90 days of the date the child enrolls in the LEA. The LEA shall adopt the IEP of the sending public agency or develop a new IEP.

(d) The receiving LEA may not adopt the evaluation and eligibility determination or the IEP of the sending public agency if the evaluation and eligibility determination or the IEP do not meet state and federal requirements.

History: Cr. Register, May, 1990, No. 413, eff. 6-1-90; r. and recr. Register, December, 1995, No. 480, eff. 1-1-96; corrections in (1) made under s. 13.93 (2m) (b) 6., Stats., Register, April, 1998, No. 508; r. and recr. Register, May, 2000, No. 533, eff. 6-1-00.

Sec. 300.515 Surrogate parents.

- (a) General. Each public agency shall ensure that the rights of a child are protected if--
 - (1) No parent (as defined in Sec. 300.20) can be identified;
 - (2) The public agency, after reasonable efforts, cannot discover the whereabouts of a parent; or
 - (3) The child is a ward of the State under the laws of that State.
- (b) Duty of public agency. The duty of a public agency under paragraph (a) of this section includes the assignment of an individual to act as a surrogate for the parents. This must include a method--
 - (1) For determining whether a child needs a surrogate parent; and
 - (2) For assigning a surrogate parent to the child.
- (c) Criteria for selection of surrogates. (1) The public agency may select a surrogate parent in any way permitted under State law.
 - (2) Except as provided in paragraph (c)(3) of this section, public agencies shall ensure that a person selected as a surrogate--
 - (i) Is not an employee of the SEA, the LEA, or any other agency that is involved in the education or care of the child;
 - (ii) Has no interest that conflicts with the interest of the child he or she represents; and
 - (iii) Has knowledge and skills that ensure adequate representation of the child.
 - (3) A public agency may select as a surrogate a person who is an employee of a nonpublic agency that only provides non-educational care for the child and who meets the standards in paragraphs (c)(2)(ii) and (iii) of this section.
- (d) Non-employee requirement; compensation. A person who otherwise qualifies to be a surrogate parent under paragraph (c) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent.
- (e) Responsibilities. The surrogate parent may represent the child in all matters relating to--
 - (1) The identification, evaluation, and educational placement of the child; and
 - (2) The provision of FAPE to the child.

(Authority: 20 U.S.C. 1415(b)(2))

1999 Assembly Bill 412

1999 WISCONSIN ACT 116

AN ACT to renumber and amend 115.76 (12); and to create 115.76 (12) (a) 10. of the statutes; relating to: modifying the definition of a parent of a child with a disability for special education purposes.

**The people of the state of Wisconsin,
represented in senate and assembly, do
enact as follows:**

Section 1. 115.76 (12) of the statutes is renumbered 115.76 (12) (a) and amended to read:

115.76 (12) (a) "Parent" means a-any of the following:

1. A biological parent;~~a-~~
2. A husband who has consented to the artificial insemination of his wife under s. 891.40;~~a-~~
3. A male who is presumed to be the child's father under s. 891.41;~~a-~~
4. A male who has been adjudicated the child's father under subch. VIII of ch. 48, under ss. 767.45 to 767.51, by final order or judgment of an Indian tribal court of competent jurisdiction or by final order or judgment of a court of competent jurisdiction in another state;~~an-~~
5. An adoptive parent;~~a-~~
6. A legal guardian;~~a-~~
7. A person acting as a parent of a child;~~a-~~
8. A person appointed as a sustaining parent under s. 48.428;~~or a-~~
9. A person assigned as a surrogate parent under s. 115.792 (1) (a) 2.

(b) "Parent" does not include any of the following:

1. A person whose parental rights have been terminated;~~the-~~
2. The state ~~or~~ a county or a child welfare agency, if a child was made a ward of the state ~~or~~ a county or child welfare agency under ch. 880 or if a child has been placed in the legal custody or guardianship of the state ~~or~~ a county or a child welfare agency under ch. 48 or ch. 767;~~or an-~~
3. An American Indian tribal agency if the child was made a ward of the agency or placed in the legal custody or guardianship of the agency.

Section 2. 115.76 (12) (a) 10. of the statutes is created to read:

115.76 (12) (a) 10. A foster parent, if the right and the responsibility of all of the persons specified in subs. 1. to 5. to make educational decisions concerning a child have been extinguished by termination of parental rights, by transfer of guardianship or legal custody or by other court order, and if the foster parent has an ongoing, long-term parental relationship with the child, is willing to make the educational decisions that are required of a parent under this subchapter and has no interests that would conflict with the interests of the child.

*Section 991.11, WISCONSIN STATUTES 1997-98: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

